

REMARKS

Procedural Matter:

The Office Action still has not indicated whether or not it accepted the drawing amendments filed on March 12, 2009. *See* Office Action coversheet PTOL-326. Applicant again requests that the Examiner consider and enter the drawing amendments filed on March 12, 2009, and indicate their acceptance in the next communication from the Office.

Office Action and Claim Amendments:

Applicant has amended claims 42-44 to improve form. Claims 23-25, 27-31, and 33-44 are pending and under examination. Applicant respectfully traverses the following rejections made in the Office Action:

- (1) rejection of claims 42-44 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement;
- (2) rejection of claims 42-44 under 35 U.S.C. § 101; and
- (3) rejection of claims 23-25, 27-31, and 33-43 under 35 U.S.C. § 103(a) as being unpatentable over “the instant application’s disclosed prior art” (“*Prior Art*”).

Rejection of Claims 42-44 under 35 U.S.C. § 112, First Paragraph:

The Office Action rejected claims 42-44 under 35 U.S.C. § 112, first paragraph, alleging that “at least one of the “computer readable medium” and “internal memory” was not described in the original disclosure of the invention.” Office Action, p. 5. Furthermore, in a Response to Arguments section, the Examiner alleges that “the [] portion of the specification [cited in the Amendment filed October 22, 2009] does not provide proper support for “computer readable medium”, and therefore, it constitutes new matter.” Office Action, p. 3. Applicant respectfully traverses these allegations. Support for a “computer readable medium” may be found in the specification at, for example, page 3, lines 6-11 (“memory” and “computer”), page 6, lines 6-8

("processor unit" and "personal computer"), page 7, lines 1-2 ("processor module"), and page 8, lines 20-22 and 26-28 ("processor unit" and "hardware components").

Nevertheless, solely to advance prosecution, Applicant has amended claims 42-44 in part to delete the recitation of "directly loaded into an internal memory of a computer." Applicant respectfully submits that the amended claims 42-44 are fully supported by the original disclosure. *See, e.g.,* Specification, p. 3, ll. 6-11, p. 6, ll. 6-8, p. 7, ll. 1-2, and p. 8, ll. 20-22 and 26-28. Claims 42-44 should therefore be allowable. Applicant respectfully requests withdrawal of the rejection.

Rejection of Claims 42-44 under 35 U.S.C. § 101:

Without conceding to the allegations in the Office Action, Applicant has amended claims 42-44 in part to recite a "non-transitory computer readable medium." Applicant respectfully notes that, as described in the U.S. Patent and Trademark Office's *Interim Examination Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101* (Aug. 2009), "a claim to a non-transitory, tangible computer readable storage medium *per se* that possesses structural limitations under the broadest reasonable interpretation standard to qualify as a manufacture would be patent-eligible subject matter." *Interim Instructions* at 4, (emphases added). Claims 42-44 should therefore be allowable. Applicant respectfully requests withdrawal of the rejection.

Rejection of Claims 23-25, 27-31, and 33-43 under 35 U.S.C. § 103(a):

Applicant requests reconsideration and withdrawn of the rejection of claims 23-25, 27-31, and 33-43 under 35 U.S.C. § 103(a) as being unpatentable over *Prior Art*.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. *See* M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ

459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In particular, the Office Action has not properly determined the scope and content of the prior art, nor has the Office Action properly ascertained the differences between the claimed invention and the prior art, at least because the Office Action has not properly interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

Specifically, *Prior Art* does not disclose or suggest at least the following claim elements recited in claim 23 (claim 28 containing similar recitations):

transmitting, simultaneously, a first set (X_1, X_2, \dots, X_N) of non-zero first samples pertaining to a first terminal of said plurality by inserting said first samples in the respective position assigned to said first terminal, and a second set ($X_{N+1}, X_{N+2}, \dots, X_{2N}$) of non-zero second samples pertaining to a second terminal of said plurality by inserting said second samples in the respective position assigned to said second terminal. (emphasis added)

The Office Action admitted that *Prior Art* “does not expressly teach” the above claim elements. See Office Action, p. 6. However, the Office Action alleged that “it is obvious and/or a matter of design choice to assign different/distinct (non-overlapping) subspaces in a buffer to different sets of samples belonging to different terminals in order to transmit the first and second non-zero samples simultaneously.” Office Action, p. 7. This is incorrect. Applicant notes that *Prior Art* teaches that “[c]urrent WLAN standards such as IEEE 802.11a and IEEE 802.11b provide for all the stations located in a certain access area being connected by sharing only one channel at a time.” Specification, p. 1, ll. 28-31 (emphasis added). In view of this, *Prior Art* does not teach transmitting different sets of samples simultaneously, but rather to “stagger [transmission of data from various local stations] over time by causing transmission from or to each single local station to take place within a given time interval.” Specification, p. 9, l. 31 to

p. 10, l. 2 (emphases added). Accordingly, *Prior Art* actually *teaches away* from claim 23. See M.P.E.P. § 2144.05(III) (“[a] *prima facie* case of obviousness may also be rebutted by showing that the art, in any material respect, teaches away from the claimed invention”).

In a Response to Arguments section, the Examiner cited *Dann v. Johnston*, quoting that the “mere existence of differences between the prior art and an invention does not establish the invention’s nonobviousness.” Office Action, p. 4, citing to *Dann v. Johnston*, 425 U.S. 219, 230, 189 USPQ 257, 261 (1976). However, Applicant respectfully submits that there is a substantial gap between *Prior Art* and the claimed invention, and this gap, as noted above, is so great that it would not have been obvious to one of ordinary skill in the art to bridge this gap. See M.P.E.P. § 2141(III).

Thus, the Office Action has neither properly determined the scope and content of the prior art, nor properly ascertained the differences between the prior art and the claimed invention. Applicant therefore submits that independent claim 23 is not obvious over *Prior Art*. Independent claim 23 should therefore be allowable. Independent claim 28, while different in scope, contains similar recitations as independent claim 23, and should also be allowable for the same reason as independent claim 23. In addition, dependent claims 24, 25, 27, 29-31, and 33-43 should be allowable at least by virtue of their respective dependence from independent claim 23 or 28, and because they recite additional features not taught or suggested by *Prior Art*. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection.

Conclusion:

Applicant requests reconsideration of the application and withdrawal of the rejections. Pending claims 23-25, 27-31, and 33-44 are in condition for allowance, and Applicant requests a favorable action.

The Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicant declines to automatically subscribe to any statements in the Office Action.

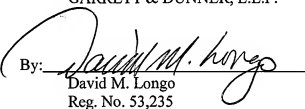
If there are any remaining issues or misunderstandings, Applicant requests the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: March 9, 2010

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